IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4242 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JOSHI DEVKIBEN WD/O JOSHI KESHAVLAL SHANTILAL
Versus
SOMAJI OKHAJI THAKORE

Appearance:
1. First Appeal No. 4242 of 2001
MR MOHANBHAI DESAI for Petitioner No. 1-4
NOTICE SERVED BY DS for Respondent No. 1-2
MS MEGHA JANI for Respondent No. 3

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 10/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Mr. Mohanbhai Desai for the appellants original claimants and Ms. Meghaben Jani, learned advocate for the respondent No.3 Insurance Co. Respondents no.1 and 2 have been served but nobody has appeared on their behalf. Present appeal has been filed by the claimants for enhancement of the amount of compensation awarded by the Motor Accident Claims Tribunal (Auxi.) Palanpur in claim petition no. 240 of 1990 dated 28th February, 2001 wherein the tribunal has awarded the compensation of Rs. 2,95,000.00 with interest at the rate of 12 per cent per annum in favour of the original claimants.

2. The facts of the present case are as under:

Appellant NO. 1 is the widow of the deceased Keshavlal Shantilal and the appellants no.2 and 3 are the children of the deceased and appellant no.4 is the mother of the deceased. On 3rd April, 1990,at about 4.30 p.m. while the deceased who was serving as a driver in the ST, was going in his bus of the route Vav Nadiad on the left side of the road, at that time, truck No. GQD 4782 driven by respondent NO. 1, owned by respondent NO. 2 herein was driven by respondent No.1 from the opposite side in a rash and negligent manner in excessive speed and had dashed with the ST Bus driven by the deceased. As a result thereof, front portion of the bus driven by the deceased was crushed and the deceased Keshavlal Driver of the ST Bus was crushed in the bus and he had received injuries. He was, therefore, shifted to the Civil Hospital, Palanpur for treatment and then died. As per the case of the claimants, at the time of said incident, deceased was aged 32 years and was hale and hearty and was receiving monthly salary of Rs.1500.00 as a driver. It was the further case of the claimants that after retirement at the age of 58 years, he would have worked in private service at least for ten years. As per the claimants, over and above that, he was having sixteen vighas of the agricultural land and was receiving income from the agricultural operations. ON the basis of these facts, the applicants claimed compensation of Rs. 11,90,000 plus costs and interest before the tribunal. The tribunal, after hearing the parties before it and considering the evidence on record, partly allowed the said claim petition and directed the respondents to pay the total compensation of Rs.2,95,000.00 vide its judgment and award dated 28th February, 2001. Feeling

aggrieved by the said award, the appellants original claimants have filed the present appeal for the remaining amount which has not been awarded by the tribunal.

3. Learned advocate Mr. Desai appearing for the appellants has submitted that the tribunal has committed gross error in not considering the relevant record produced by the ST Corporation vide Exh. 28 and 29. According to him, Exh. 28 is the report of calculation as to how much amount the deceased would have earned if he would have survived till the completion of service. As per that, he would have earned Rs.11,21,573 as salary plus Rs.3,20,564.00 towards provident fund and Rs.75,227.00 towards gratuity. According to his submission, in Exh.28, calculations were made on the basis of the fact that the deceased would have retired from service in July, 2011. He has submitted that the document Exh. 29 is the report relating to the amount payable towards gratuity. According to his submissions, the tribunal has erred in not considering these two documents while awarding the compensation in favour of the claimants and, therefore, the award made by the tribunal is on its lower side and the same is required to be enhanced. Mr.Desai has submitted that the tribunal has ignored the material on record. According to him, the tribunal has erred in considering only Rs.1000.00 existing salary of the deceased and after considering the future prospects, the tribunal has considered the salary of the at Rs.2,000.00 and thereafter, the tribunal has deducted 1/3rd amount as personal expenses and dependency has been decided at Rs.1500.00. Mr. Desai has also submitted that the tribunal has also committed an error in applying multiplier of 15. According to him, as per Schedule-II read with section 163A of the Act, if the deceased is beyond 30 years at the time of incident, then, multiplier of 17 is applicable and, therefore, on both the aspects, while assessing the income of the deceased and also while applying the multiplier of 15, the tribunal has committed error and, therefore, the award of the tribunal is required to be enhanced. He has also relied upon the decision of the division bench of this court in case of Saruyaben Harisingbhai Bilal versus Ataullakhan Mehtabkhan Lalkhan Pathan and others reported in 2001 (3) GLR page 2029.

On the other hand, learned advocate Ms. Meghaben Jani appearing for respondent NO.3 insurance company has submitted that the tribunal was right in assessing the income of the deceased; it was also right in considering the dependency and applying the multiplier, considering the age of the deceased. It was her submission that at

the time of accident, the deceased was receiving the salary of Rs. 1104.00 and, therefore, the tribunal has rightly assessed the round figure of Rs.1000.00 as existing income of the deceased and after considering the future prospects, the tribunal was right in assessing the income of the deceased at Rs.2000.00. In short, it is her submission that the tribunal has not committed any error which would require interference of this court.

We have considered the submissions made by the learned advocates for the parties. We have also considered the decision of this court in case of Saruyaben Harisingbhai Bilal versus Ataullakhan Mehtabkhan Lalkhan Pathan and others reported in 2001 (3) GLR page 2029. We have also perused the impugned award of compensation made by the tribunal. Before the tribunal, on behalf of the claimants, one witness Ramesh A. Parekh, Junior Assistant, ST Corporation was examined from Nadiad Division vide Exh. 26. At the relevant time, Shri Parekh was working in the Account Branch. He produced the statement vide Exh. 28 and Exh. 29 wherein details have been given by the corporation considering the age of superannuation of the deceased. According to the corporation, the deceased was to retire in July, 2011. As per his deposition at Exh.26, at the time of incident, the deceased was drawing monthly basic pay of Rs.800.00 plus Rs.304.00 towards DA and Rs.97.00 towards family pension and Rs.13.00 towards PF were being deducted. As per his oral evidence at Exh. 26, the deceased, if he would have survived, would have earned Rs.11,21,573.00 plus Rs.3,20,564.00 towards PF and Rs.75,227.00 towards gratuity. Necessary documents were produced before the tribunal by the claimants and said documents were proved by examining Shri Parekh at Exh. 26. Vide Exh.26, said witness produced necessary record which has not been disputed by the other side and yet the tribunal has not properly appreciated the said record and has not relied upon the said record only on the ground that there is uncertainty in the life and job and, therefore, the tribunal has ignored the said record and has also held that the claimants are not entitled for compensation on the basis of the documents at Exh. 28 and 29. Before the tribunal, one witness Shri Ranchhodbhai Mathurbhai, Conductor was examined on behalf of the claimants vide Exh. 21 and as per his deposition, the salary of the driver is higher than the salary of the conductor category and at that time, he was receiving total salary of Rs.4000.00 from the corporation. The tribunal has also erred in holding that the deceased had studied only upto Std.5 and, therefore, there was no chance of promotion to the deceased and, therefore, on

that basis, calculation has been prepared by the tribunal on the basis of the existing salary of the deceased as a driver and while considering the income of the deceased, promotional avenues were not taken into consideration by the tribunal. In view of these facts of this case, learned advocate for the appellants has relied upon the decision of the division bench of this court in case of Saruyaben Harisingbhai Bilal versus Ataullakhan Mehtabkhan Lalkhan Pathan and others reported in 2001 (3) GLR page 2029. He has submitted that in the said decision, identical facts were examined by the Division Bench of this Court. He also submitted that the learned advocate Ms. Megha Jani had appeared in that case also. As per the facts of the said decision, the tribunal awarded an amount of Rs.2,47,000.00. The deceased in the reported decision was a member of the ST Community, working as a clerk in the office of the Mamlatdar at Thasara and at the time of accident, he was getting Rs.1357.00 p.m. and he had passed the departmental examination and had he not died, he would have been promoted as a Deputy Mamlatdar in the same year. The tribunal in the said reported decision assessed income of the deceased at Rs. 1500.00 and according to the service record, at the time of accident, the deceased has been paid Rs.1334.00 in December, 1987 and at the time of superannuation, salary would have been Rs.6717.00. The division bench of this court in the said reported decision, considered these two figures namely existing salary of Rs.1334.00 and future salary of Rs.67fs17.00 and divided the total of the said figure i.e. Rs. 8051.00 by two, and the average or one half of the said figure of Rs.8051.00 was coming to Rs.4025.50. The Division Bench has taken round figure of Rs.4000.00 as monthly income of the deceased and out of Rs.4000.00 monthly income of the deceased, the Court deducted Rs.1000.00 as 1/4th towards personal income of the deceased. After deducting Rs.1000.00 from the monthly income of Rs.4000.00 of the deceased, remaining monthly dependency of Rs.3000.00 was multiplied by 12 and annual dependency arrived at by this Court was Rs.36,000.00. Considering the age of the deceased which was 32 at the relevant time, the division bench applied multiplier of 18 and multiplied the annual figure of Rs.36,000.00 by 18. The figure available by applying multiplier of 18 was Rs.6,48,000.00 and, thus, the division bench of this court has enhanced the compensation from Rs.2,16,000.00 awarded by the tribunal to Rs.6,48,000.00.

In the facts of the present case also, at the time of accident, the deceased was receiving the salary of Rs.1100.00and at the time of his retirement as per the

service record at Exh. 28 and 29, the deceased would have been receiving the basic salary of Rs.1721.00 and Dearness Allowance of Rs.4182.00. Total of these two figures i.e. basic salary and DA would come to Rs. 5903.00. As per the formula adopted by the Division Bench in the said reported decision, if the total of the existing salary of the deceased of Rs.1100.00 and the future salary of the deceased of Rs.5903.00 is considered, total figure of the said two figure would come to Rs.7003.00 and if same is divided by two, round figure of the one half of the said amount would come to Rs.3500.00. and if 1/3rd of the said amount is deducted towards the personal expenses of the deceased, then the dependency would come to Rs.2,350.00 per month and annual dependency would, therefore, come to Rs.28,200.00. Now, the tribunal has applied the multiplier of 15. However, according to the submission made by Mr. Desai, learned advocate for the appellants, as per Schedule II, if the age of the deceased is beyond 30 at the time of accident, then, multiplier of 17 has to be applied. Therefore, considering Schedule II and also considering the fact that the age of the deceased at the time of accident was 32 years, we are of the view that in this case, instead of 15, multiplier of 17 has to be applied and if the amount of annual dependency of Rs.28200.00 is multiplied by 17, then, the total amount would come to Rs. 4,79,400.00.

Therefore, in view of these calculations based upon the decision of the division bench of this court in case of Saruyaben Harisingbhai Bilal versus Ataullakhan Mehtabkhan Lalkhan Pathan and others reported in 2001 (3) GLR page 2029, we are of the view that the claimants are entitled to dependency of Rs.4,79,400.00 whereas the tribunal has awarded Rs.2,70,000.00 under the said head. Therefore, we are of the view that the dependency benefit awarded by the tribunal is required to be enhanced by Rs.2,09,400.00 which is the difference of two figures namely Rs.4,79,400.00 as calculated by us and Rs.2,70,000.00, awarded by the tribunal towards dependency benefits to the claimants.

Now, we are not disturbing rest of the figures awarded by the tribunal under other different heads namely Rs.10,000.00 towards the loss of consortium; Rs.10,000.00 towards the pain, shock and suffering and Rs.5,000.00 as funeral expenses, total of which would come to Rs.25,000.00 and if the same is added to Rs.4,79,400.00, figure of total compensation would be of Rs.5,04,400.00 whereas the tribunal has granted total compensation of Rs.2,95,000. Therefore, considering this

fact, total amount of additional compensation which we have granted as dependency benefit is Rs.2,09,400.00 which is required to be paid by the respondents to the original claimants.

Learned advocate Ms. Meghaben Jani has submitted that the tribunal has directed to pay the amount under the award with interest thereon at the rate of 12 per cent per annum from the date of the claim petition but today, this court has awarded additional compensation in favour of the claimants and, therefore, according to her submission, in view of the KHUSHNUMA BEGAM AND OTHERS VERSUS NEW INDIA ASSURANCE CO. LTD. AND OTHERS reported in 2001 ACJ 428, and also in view of the decision of the apex court in case of H.S. Ahammed Hussain & ANr. v/s. Irfan Ahammed & ANr. reported in 2002 (2) GLR 1825 and in case of United India Insurance CO. Ltd. versus. Patricia Jean Mahajan and others etc. reported in AIR 2002 SC 2607, the claimants are entitled for interest at the rate of 9 per cent per annum on the amount of additional compensation of Rs.2,09,400.00 from the date of claim petition till the date of payment made by the insurance company. We have considered the submissions made by Ms. Jani and we are of the view that these submissions made by Ms. Jani would require consideration which is based upon recent change or trend of the Hon'ble Apex Court in granting interest in Motor Accident Claims. Accordingly, the award made by the tribunal concerned in Motor Accident Claim Petition No. 240 of 1990 dated 28th February, 2001 is modified. Respondent No.3 Insurance Company is hereby directed to deposit the additional compensation amount of Rs.2,09,400.00 with interest thereon at the rate of 9 per cent per annum from the date of the claim petition till the date of deposit within eight weeks from the date of receipt of copy of this order. On such amount being deposited by the insurance company before the tribunal, the tribunal shall disburse 10 per cent thereof to the appellant no.4 mother by way of account payee cheque in the name of appellant no.4 after due verification. Rest of the amount is equally divided between appellant No. 1, 2 and 3. As regards the share of appellant No. 2 and 3, same is directed to be invested in any nationalized bank for a period of five years in the name of appellant no.2 and 3. As regards the share of appellant no. 1, it is directed that the 40 per cent thereof shall be paid to the appellant no.1 by way of account payee cheque drawn in favour of the appellant no.1 after due verification. Remaining amount of the share of appellant no.1 i.e. 60 per cent thereof is ordered to be invested in any nationalized bank for a period of five years. It is

clarified that the appellants no.1, 2 and 3 shall be entitled to make withdrawal of periodical interest of the said FRDs. This appeal is allowed to the extent indicated hereinabove with no order as to costs. Registry is directed to draw the award accordingly. Registry is also directed to send back the Record and Proceedings forthwith to concerned Tribunal.

Dt. 10.10.2002. (Kshitij R.Vyas,J.)

(H.K. Rathod,J.)
Vyas